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CONGRESSIONAL.

SPEECH OF THE
HON. HUGH L. WHITE, OF
TENNESSEE,

On the Bill to distribute the proceeds of the sales of the Public Lands among the different States, delivered on the 25th of April, 1836.

Mr. White rose and addressed the Senate to the following effect:—
MR. PRESIDENT: The subject under consideration is not new, but the circumstances connected with it are both novel and important.

Formerly we were in debt, and had no money in the Treasury, which we could not conveniently use. Now we owe nothing, and have an overflowing Treasury. The common wants for an economical administration of the Government, will require but a small portion of our vast and accumulating treasure; and the question is, what disposition shall we make of the surplus.

Several projects have been presented. An increase of the Army, of the Navy, additional fortifications, and munitions of war, is one plan. Another is to put the funds in the power of the Commissioners of the Sinking Fund, and let them invest them in stocks, which will add to our wealth. A third is, to form contracts with incorporated Rail-road Companies for transporting the mail, your warlike stores and your armies. And the fourth is, that presented by this Bill, which is to distribute the proceeds of the Public Lands among the several States.

In forming an opinion upon this subject I find myself compelled to form some opinion on each of the others also, that I may be able to decide which ought to be preferred.

But the first question to be settled is one of power.

If we have no power to dispose of this money, as this Bill proposes, it is only a waste of time to pursue the subject any farther.

Some of our enlightened public men, years past, foresaw difficulties which would, in time, originate from surpluses accumulating in the Treasury, and suggested this very plan for disposing of them. Some doubted the power under the Constitution, and suggested an amendment to remove the doubt; others felt no doubts, therefore did not deem any amendment necessary. All, however, seem to have concurred in the fairness and justice of this disposition of such funds, as might not be needed, for the uses of the Federal Government.

If I mistake not, Mr. Jefferson, while President, made a suggestion to Congress on this subject.
Ten years ago an honorable Senator, from New Jersey, now Secretary of the Navy, and I do him the justice to add, then, as well as now, a zealous friend of the present Chief Magistrate, moved in this body on this subject, had a Committee created, made an able detailed report, accompanied by a bill, which was not finally acted on during the session.

To do this gentleman justice I must recur to this report, and read such parts of it as are material, that we may have the benefit of his opinion as enforced by himself. It is found in the 4th vol. of the Senate Documents at the session 1825 and 1826; doc. 95, page 1; and in these words:

"The Committee, from an earnest examination of the subject, as a due attention to their other duties would permit them to make, have come to the conclusion that great advantages would result to the United States from an annual distribution among them, by some equitable ratio of a portion of our national revenue, for the purposes of education and internal improvement, or for such other purposes as the State Governments may respectively deem most to their advantage. Whether the United States shall divide the whole of their revenues, beyond what are required for the usual expenditures of the Government, domestic and foreign, civil, military, and naval, to the reduction of our public debt, until the whole of it shall be extinguished; or whether they shall apply a portion of those revenues, as proposed for the most important purposes, and thereby cause a more gradual reduction of the public debt, resolves itself into a question of expediency.

"It remains for Congress to determine which of these courses will most effectively promote the present, as well as the future, prosperity of the country. There can be no doubt, that money distributed among the States as proposed, would be invested in a way to give much greater profit, than the interest on such money would yield at three, four and an half, or even five per cent, which are the rates of interest now paid on the greater part of our public debt.

"As a large portion of this debt is payable to persons in Europe, to discharge it as fast as our means would permit, would be to send from the country, more than necessary, funds that are wanted at home, the inconvenience of which would be sensibly felt in the present embarrassed state of our moneyed market, and most probably, for several years to come.

"Money distributed as proposed, would give new activity to industry and enterprise in all the States; and that equal and simultaneous.

"It would create a vigilance on the part of the State Governments, over the expenditures of the General Government, and thereby prevent the waste of money, and the adoption of extravagant measures, that might diminish the amount of the annual dividends.

"It would secure impartial justice to all the States in the distribution of the expenditures of our revenue, a failure of which at present is a subject of loud and just complaint.

"It would relieve the General Government of the serious inconvenience of an overflowing Treasury, which, if not provided for in the manner proposed, or by a reduction of our revenue, will impair the most important principles of our Constitution.

"It would relieve the two Houses of Congress of a large portion of legislation, now devoted to the disposal of our surplus funds—legislation of the worst kind, calculated to produce combinations, sectional feelings, injustice and waste of the public treasure.

"It would transfer to the States, the regulation of large expenditures for Internal Improvements by roads and canals, which if retained and exercised by the General Government, contrary, as is believed by many, to the letter and spirit of our Constitution, will, in time, so far decrease the powers of the State Governments, and increase those of the United States Government, as to destroy the federative principle of our Union, and convert our system of confederated republics into a consolidated Government.

"It would remove the cause of the great and increasing difficulties arising from an objection, on constitutional grounds, to the exercise of the right claimed on the part of the United States, of making roads and canals through the different States of the Union. It would enable the General Government to keep in operation an efficient system of finance and revenue with advantage to the States. And should the exigencies of the country require the application of all our means to some object connected with our national peace and prosperity, those means could soon be brought into operation, by suspending, for a time, the dividends to the States.—By this our Treasury would be filled without a sudden resort to new taxes, which might be oppressive to agriculture, and which might create much inconvenience by interrupting the pursuits and industry of our citizens.

"Money collected from the sources which now give us our revenues and distributed among the States as proposed, would produce a rapid and profitable circulation of our funds, from the centre to the extremities of the Union, and thus add to the force of the moneyed capital of the country."

It will here be remarked, no doubt was felt or expressed, as to power to distribute every portion of the revenue, which could be spared, and a plan was recommended for adoption immediately, although we then owed a large debt, bearing various rates of interest, from 3 up to 6 per centum.

Next in the order of time, is the Message of the present Chief Magistrate at the commencement of the session of Congress in 1829; found in the Senate Journal pages 13 and 14. That part of it which is material, is in these words:

"After the extinction of the public debt it is not probable that any adjustment of the tariff, upon principles satisfactory to the people of the Union, will, until a remote period, if ever, leave the Government without a considerable surplus in the treasury, beyond what may be necessary for its current service. As then the period approaches when the application of the revenue to the payment of the debt will cease, the disposition of the surplus will present a subject for the serious deliberation of Congress, and it may be fortunate for the country that it is yet to be decided, considered in connexion with the difficulties which hereofore attended appropriations for purposes of internal improvement, and with those which this experience tells us will certainly arise, whenever power over such subjects may be exercised by the General Government; it is hoped that it may lead to the adoption of some plan, which will reconcile the diversified interests of the States, and strengthen the bonds which unite them. Every member of the Union, in peace and in war, will be benefited by the improvement of inland navigation, and the construction of highways in the several States. Let us then endeavor to attain this benefit in a mode which will be satisfactory to all. That, if citizens, been deprecated as an infraction of the Constitution, while by others it has been avowed as inexpedient. All feel that it has been employed at the expense of harmony in the legislative councils.

"To avoid these evils, it appears to me that the most safe, just and federal disposition; which could be made of the surplus revenue, would be its apportionment among the several States according to their ratio of representation—and should this measure not be found warranted by the Constitution, that it would be expedient to propose to the States an amendment authorizing it. I regard an appeal to the source of power, in cases of real doubt, and when its exercise is deemed indispensable to the general welfare, as among the most sacred of all our obligations. Upon this country, more than any other, lies, in the province of God, been cast the special guardianship of the great principle of adherence to written Constitutions. If it fall here, all hope in regard to it will be extinguished. That this was intended to be a Government of limited and specific, and not general powers must be admitted by all; and it is our duty to preserve for it the character intended by its framers. If experience points out the necessity for an enlargement of these powers, let us apply for it to those for whose benefit it is to be exercised; and not undermine the whole system by a resort to overstrained constructions," &c.

It will be perceived that in these two short paragraphs, the justice and utility of distributing these surplus funds, are presented to the mind, in language as clear, distinct, and forcible, as can well be employed.

It was not necessary to his purpose, and therefore he did not examine the question whether the powers of Congress over the moneys arising from the public lands, were as limited as those possessed over moneys derived from taxes, and he contents himself with the expression of a general doubt on the question of power, and recommends an amendment of the Constitution to remove it.

At the session of 1831 and 1832,

this subject is introduced into the Report of Mr. M'Lane, then Secretary of the Treasury, and afterwards Secretary of State. What he says will be found in the Senate Documents, vol. 1, doc. 3, page 12—and is in these words:

"The sources from which the revenue has hitherto been derived, are the imports, public lands, and bank dividends. With the sales of the bank stock the latter will cease; and as the imports, according to any scale of duties which it will be expedient and practicable to adopt, will be amply sufficient to meet all the expenditures, that portion of the revenue heretofore drawn from the sale of the public lands may be dispensed with, should Congress see fit to do so.

"On this point, the undersigned deems it proper to observe, that the creation of numerous States throughout the Western country, now forming a most important part of the Union, and the relative powers claimed and exercised by Congress and the respective States over the public lands, have been gradually accumulating causes of inquietude and difficulty, if not of complaint. It may well deserve consideration, therefore, whether, at a period demanding an amicable and permanent adjustment of the various subjects which now agitate the public mind, these may not be advantageously disposed of, in common with the other, and upon principles just and satisfactory to all parts of the Union.

"It must be admitted that the public lands were ceded by the States, or subsequently acquired by the United States, for the common benefit, and that each State has an interest in their proceeds, of which it cannot justly be deprived. Over this part of the public property, the powers of the General Government have been uniformly supposed to have a peculiarly extensive scope, and have been construed to authorize their application to purposes of education and improvement, to which other branches of revenue were not deemed applicable. It is not practicable to keep the public lands out of the market, and the present mode of disposing of them is not the most profitable, either to the General Government, or to the States, and must be expected, when the proceeds shall be no longer required for the public debt, to give rise to new and more serious objections.

"Under these circumstances, it is submitted to the wisdom of Congress, to decide upon the propriety of all the public lands in the aggregate, to those States within whose territorial limits they lie, at a fair price, to be settled in such manner as might be satisfactory to all. The aggregate price of the whole may then be apportioned among the several States of the Union, according to such equitable ratio as may be consistent with the objects of the original cession, and the proportion of each paid," &c.

The vigorous and discriminating mind of this highly gifted and useful man, at once recognized as sound, a distinction in the powers of Congress over moneys derived from a disposition of the public lands, and those powers that may be supposed to possess over moneys derived from other sources, and he strongly urges the necessity and propriety of a distribution among the States.

It is fortunate that we are not yet placed in circumstances which make it essential to decide whether we have a power to divide all surplus revenue, no matter from what source derived. I profess to be what is called a strict constructionist of the Constitution, and that our power to appropriate money is necessarily confined to appropriations, to effect some object upon which Congress is expressly empowered to legislate, or some necessary and appropriate means to effect such enumerated objects. Still I never have been satisfied we do not possess the power to distribute surplus revenue, if it is believed wise to do so.

No just Government will take, either by direct or indirect taxes, more money than is necessary to defray all the reasonable expenses of the Government. When taxes are imposed either directly, or by an assessment of duties, it cannot be foretold precisely how much will be wanted, or how much will be received, in the Treasury. We must necessarily act upon estimates. To some extent, we will be mistaken. Foreseeing this, and for the sake of collecting what will be certainly sufficient, we will almost invariably collect more than is necessary. In a series of years these accumulating balances will amount to a sum too large to remain locked up, and entirely useless. What then is to be done? We surely are not at liberty to devise some wasteful and mischievous project, merely to use the money.

"It came into the Treasury by mistake. Mistakes which, in the nature of things, could not be avoided. Have we no power to correct them when discovered? Is not the power to refund the money a necessary result from the power to assess and collect it?"

Is not this a power which Congress has always exercised, and most exercise, as to individuals?

By mistake, our officers collect and place in the Treasury, money which ought not to have been collected, the mistake is discovered, and the individual calls on Congress for redress.—We pass a law to refund the money. Where do we get power to do this? There is no express grant of any such power, but it results from the very nature of the relation which exists between the payer and receiver. The latter must always have power to act justly, to act honestly, and whenever he finds he has money through mistake, he would seem to have power to return it. But I do not intend to express any opinion on this point, or to prolong a discussion, by introducing

important topics, not necessary to our action on this bill. All I intended, was to state, for myself, that should it ever become necessary to discuss the general subject of our power to distribute the whole surplus, no matter from what source derived, for one, I think it well worth a careful and deliberate consideration, before it is either affirmed or denied; and I most heartily concur in the sound doctrine of the President, that we ought not to act, when there is a reasonable doubt of our power.

The question which we must now decide is, whether we have power to do that which all admit, it is perfectly just we should do, if we have the power—distribute the proceeds of the sales of the public lands.

The following considerations have satisfied my own mind, and they are respectfully submitted for the reflection of others. Our public lands were acquired by the United States, by deeds of cessions from several individual States, and by the purchase of Louisiana and Florida, which were paid for by moneys derived from the lands which had been ceded by individual States.

The most important cession was made by the State of Virginia, in the year 1784, and that part of the cession material to our present purpose, is in the following words:

"That all the lands within the territory so ceded to the United States, and not preserved for, or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a common fund for the use and benefit of such of the United States as have become, or shall become, members of the confederation, or Federal alliance of the said States, Virginia inclusive, according to their usual respective proportions in the general charge and expenditure, and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever."—1 vol. Laws U. S. p. 474.

This language creates an express trust between the United States and each individual State.

By it the United States stand pledged to hold these lands in trust, that they shall be faithfully managed, and their avails applied for the joint benefit of all.

So far as it has been applied to the payment of debts due by all, the trust has been complied with; but now the debts are paid, and there is a surplus, have we the power to give this surplus to those for whose use the trust was created?

I might ask who can doubt it? Suppose the States still bound together only by the articles of confederation, out of money raised in its own way, and out of its own means, each State had paid, when called on, its regular quota for the expenses of the Federal Government, and for the payment of the national debt, and there was a surplus of twenty or thirty millions of dollars, for which the Federal Government had no use, would we not be bound to distribute it? I say we would not only have the power to do so, but if we did not exert it, a court of chancery would compel us, if we could be sued.

The very terms of the session look to distribution. If this were not so, why say in the deed, that when used for the benefit of all, "Virginia shall be included?" Why fix the "ratio" in which payments shall be made to each? If we only have power to pay debts, and bear common expenses of Government, with these moneys, and can do nothing else with them, both these regulations would have been useless.

I take it therefore as too clear for a doubt, that if now connected by the articles of confederation only, we would have the power to distribute. The next question is, did the adoption of the present Constitution alter the rights of the parties, or take from Congress the power to comply with their engagement? I answer unhesitatingly no.

In the 6th article of the Constitution, the first paragraph runs thus: "All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the confederation."

In the 3d section of the 4th article of the same instrument, this language is found: "The Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory or other property of the United States, and nothing in this Constitution shall be construed to prejudice any claims of the United States, or of any particular State."

Thus we find all debts contracted, and engagements entered into, before, were to remain unchanged, and the respective rights of the United States and of each individual State, were to remain precisely as if the form of Government had not been altered, and express power is conferred to dispose of the public lands, and to make all needful rules and regulations respecting the territory or other property of the United States.

With these different provisions before him, who can doubt the power of the United States, to do that which, by accepting this trust, they expressly agreed to do?

Cessions from the other States are made substantially on the same con-

ditions, and liable to the same dispositions by Congress. Louisiana and Florida were purchased with the avails of these ceded lands, the trustee is the same, and that trustee holds these lands loaded with exactly the same burden, and is bound, if those for whose use they are holden desire it, to dispose of them and their proceeds in the same manner.

I hold, therefore, that be the general question of power to distribute the whole revenue, settled as it may, there ought to be no question as to the power to divide moneys arising from the sales of lands.

But it has been argued that if we have the power, there is no money to divide. That when the amount is settled, the net gain will not exceed \$400,000.

To this I can never agree. The United States took this trust fund, and with it purchased Louisiana and Florida, and now we are told they have had the use of the money for nothing, and will only account for the principal.

This is not the case. If the trustee takes the trust fund and trades upon it, he must account to the cestui que use, for all the profits made.

The question in chancery would be, not what these countries cost, but what they are worth.

You cannot fix a price. Louisiana and Florida! The sovereignty and jurisdiction over them alone, is worth more to this Union, than all the national debt we ever owed.

How much duties have we collected from their ports? How much have we avoided paying, by making them our own, instead of letting them remain foreign ports? How many wars have we avoided by their purchase? In short, what would you take for them? No sum. They are beyond price to the rest of the Union.

On this part of the subject, the question with me is, not what sum we now have in the Treasury, which was received for the sale of lands, but whether we have a sum in the Treasury equal to that proposed to be distributed, over and above all that is necessary to be appropriated to take care of the great interests of the country, and without debiting the States with the sums paid for Louisiana and Florida, because I am sure, upon any fair settlement, the sum due from the Union, is at least equal to the sum which it is proposed now to distribute.

What sum have we, and what will we probably receive, in the course of the year?

I will take round sums, disregarding fractions.

| | |
|--|--------------|
| We now have in the Treasury | \$32,000,000 |
| Of this sum, the quarter ending 31st March, produced | \$11,000,000 |
| Suppose the remaining three quarters to average the like sum, and we will have on the 31st December, more by | \$3,000,000 |
| Add the value of our bank stock | 7,500,000 |
| Estimated amount | \$72,500,000 |
| Deduct for falling off and deficiencies | 5,500,000 |
| | \$67,000,000 |

After this liberal deduction, we will have sixty-seven millions at the end of the year.

Now for expenditures: The ordinary wants of the Government ought not to exceed \$15,000,000. Mr. M'Lane, in the report of 1831, to which I have adverted, fixes upon that as a sum amply sufficient, and it appears to me in all conscience it must be enough, unless our prosperity is to drive us into the most mad excesses.

Let us then take this as the sum necessary for our ordinary expenses in the course of the year

| | |
|---|------------|
| Add to this, to be distributed among the States | 27,000,000 |
|---|------------|

These two sums amount to \$42,000,000. Take forty-two millions from sixty-seven, and we will still have in the Treasury twenty-five millions of dollars, to apply to any extraordinary expenditures for the army, the navy, for fortifications, or for any other purpose whatever.

The army ought to be increased so much as to render secure our frontiers. The increase of our navy may be hastened to some extent, and we ought ultimately to have a naval force, more than able to chastise and drive off any foreign fleet sent to blockade, or seriously to infest our coast. Larger than that we do not need, and ought not to have, if it were given to us.

Fortifications are only wanted for important points, at which an enemy might do much mischief to public or to private property, by sudden incursion. The whole coast we never can, and should never attempt to defend by fortification.

If we do, we must have a large standing army to defend them; otherwise they will be applied to the protection of our enemies.

We are told by the Secretary of War, in a document before me, that Old Point Comfort covers 63 acres of ground, and to protect it by an adequate force, would require several thousand men.

We never can, we never ought to attempt to defend our whole coast, by so many fortifications, as will require any considerable increase of our army.

If we do, in time of peace, these

troops will come, on days of election, and as they are hired to do our fighting they will do our fighting likewise, and in a short time leave us nothing worth fortifying.

Such defences are contrary in the spirit and genius of our Government, and ought never to be countenanced, or tolerated to the unreasonable extent, which some appear now to desire. In the same document at pages 21, 22, from the War Department, the Secretary says no new fortification ought to be commenced until all the proposed sites are resurveyed and plans devised upon a suitable scale, and recommends a Board for that purpose, which will require a small appropriation of thirty thousand dollars.

He also recommends experiments to be made in relation to steam, or movable batteries, which will require an appropriation of one hundred thousand dollars.

Well then, if we concur with the Secretary, we want, at present, no appropriation for new fortifications; but these two sums equal to one hundred and thirty thousand dollars to defray the expenses of a Board, and the experiments of which I have spoken.

As to the fortifications, now in progress, let such increase be made in the appropriations, as can reasonably be used in the course of the year.

As to the suggestion made that we ought, at once, to appropriate a sum large enough to complete the work, although it may be five or ten years before it can be completed, I do not think it ought to be sanctioned. It is unnecessary, and for a long time, putting at hazard, in the hands of agents, who may prove faithless, large sums of money. From year to year let the appropriations be made, and thus avoid all unnecessary risk.

According to this same document, the expense necessary for ordnance must be comparatively trifling. We can be much more readily supplied than I had imagined.

Upon the whole I think all the reasonable demands for the army, for the navy, for fortifications, ordnance, and other munitions of war, can be supplied without making any serious impression, upon that large fund left in the Treasury, after providing for the distribution, as proposed in this bill.

Allusion has been made to matters pending before us, when not acting as a Legislature, which, if perfected, may occasion a considerable increase of expenditure.

That may be so; yet we must remember that not much of this expenditure will, or can be this year, or the next, and that these very measures will increase our resources, if not entirely equal to our increased expenditure, very nearly so. These matters, therefore, may be laid aside.

Another project for filling the Treasury of its surplus, is that of placing it in the hands of Commissioners of the Sinking Fund, and authorizing them to invest it in some secure stock, yielding a reasonable profit. This might do, and is probably intended as an expedient to save the money from loss; but as to a mode of lessening the fund, it would be making bad worse. It would be devising a plan to increase our store, because we would expect a return of the principal and the interest produced by it.

But for myself, I have no idea of sending our money among stockjobbers, into the market, to be higgling for bargains which in one day may be very good and in some other, very bad. Far rather would I prefer they should remain where they now are.

The last scheme for adoption is, that from the Post Office Committee with the aid of steam. With the aid of this machinery, I have very little doubt, the whole can be accomplished in a very short time.

The whole of this, which, without intending disrespect to the Committee, I must call artful contrivance, is neither more nor less, than the old system of Internal Improvement, with Federal means, and by Federal power, revived, and the more odious, because of the attempt at concealment. The old system has the merit of manliness. Its friends think the Federal Government has the power, and openly avow that they will exercise it, because, in doing so, they promote the public interest. This seeks to violate the Constitution by stealth, and the contrivers of it must think the device is so artfully concealed, that the public can never find out the design.

Now, sir, I think it perfectly proper, that where a rail road can be had, the Post Master General ought to have the power to contract with the company, to carry his mail, and I understand he has this power already; therefore as to existing roads the bill will be of no use. He can make just as good a contract without, as with, this bill.

It can only operate on roads commenced and unfinished, or ones being commenced. How then will it operate? Say the road is to be one hundred miles long, and ten or twenty miles only finished, and the company to need funds, they make a contract to carry the mail, and receive at once out of the Treasury, a sum of money,